

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

QUIANA JOHNSON, et al.,)
Plaintiffs)
v.) Case No. 3:10-0726
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY,)
et al.,) Judge Haynes/Bryant
Defendants) Jury Demand

TO: THE HONORABLE WILLIAM J. HAYNES, JR.

REPORT AND RECOMMENDATION

Pending before the Court is plaintiffs' motion to remand (Docket Entry No. 7). As grounds for this motion, plaintiffs state that this case was removed from the Circuit Court for Davidson County, Tennessee, based upon federal question subject-matter jurisdiction (Docket Entry No. 1). Plaintiffs further assert that since removal to this Court they have amended their complaint (Docket Entry No. 6), to delete all claims under the Constitution or laws of the United States. Therefore, plaintiffs maintain that this Court no longer has subject-matter jurisdiction of this case and, therefore, it should be remanded to the Circuit Court for Davidson County, Tennessee.

Defendant Metropolitan Government has filed a response in which it states that it does not oppose remand of this action. (Docket Entry No. 9).

Rule 12(h)(3) of the Federal Rules of Civil Procedure states as follows: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." It appears from this record that while this case was removed based upon claims in the original complaint arising under the Constitution of the United States, plaintiffs by their amended complaint have deleted those claims from this action. Therefore, it appears that this Court has been deprived of subject-matter jurisdiction and the undersigned Magistrate Judge for this reason finds that plaintiffs' motion to remand should be granted.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge recommends that plaintiffs' motion to remand (Docket Entry No. 7) be granted and that this case be remanded to the Circuit Court for Davidson County, Tennessee.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has 14 days, from receipt of this Report and Recommendation, in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have 14 days, from receipt of any objections filed in this Report, in which to file any responses to said objections. Failure to file specific objections within 14 days of receipt of this Report and Recommendation can constitute a waiver of further

appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S.Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 25th day of August, 2010.


/s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge